

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s):      A. NAKADA                      CONF NO:      1276  
SERIAL NO.:      09/832,488                      ART UNIT:      2445  
FILING DATE:      04/11/2001                      EXAMINER:      BHATIA, AJAY M  
TITLE:      MESSAGE HANDLING METHOD, FOR MOBILE AGENT IN A  
                    DISTRIBUTED COMPUTER ENVIRONMENT  
ATTORNEY  
DOCKET NO.:      954-007861-US (DO1)

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Board of Patent Appeals and Interferences  
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Alexandria, VA 22313-1450

Appeal No.: 2008-000843

**REQUEST FOR REHEARING**

(37 C.F.R. §41.52)

This is in response to the Decision on Appeal decided on July 22, 2009 for the above-identified application. A rehearing is hereby requested.

This Honorable Board has stated that since the preamble ("for execution by a message processor" in this case) is not a limitation, merely reciting "halting" and "resuming" does not recite that the execution of the threads themselves is halted in one place and resumed in another. It is respectfully submitted that a preamble is a limitation if it is relied upon to distinguish the claim from the prior art. See *Symantec Corp. v. Computer Associates International*, 86 USPQ2d 1449, 1454; *Intirtool Ltd. v. Texar Corp.*, 70 USPQ2d 1780, 1784. Here the preamble has been so argued (Appelants' Brief, page 7, first paragraph), and therefore it is a limitation. Further, "halting" has been argued in the Amendment of 19 May 2004, p. 8, third and seventh full paragraphs, while "resuming" has been argued in said Amendment, p. 7, second full paragraph, and p. 8, fifth full paragraph. As a result, the claim must be construed so that the threads are halted in one place and resumed in another.

Similarly, "capable of controlling" has been argued as distinguishing over the prior art. See Amendment of 19 May 2004, p. 8, second full paragraph; Appellants' Brief, page 7, first paragraph; page 11, third full paragraph; page 12, last paragraph; Reply Brief p. 2, fifth full paragraph, p. 3, first full paragraph. While this phrase is in the main body of the claim rather than the preamble, it is submitted that this is even more reason to consider it a limitation. Further, this is true even if it is considered "functional". See *Cordis Corp. v. Boston Scientific Corp.*, 90 USPQ2d 1401, 1413; *In re Swinehart and Sfiligoj*, 169 USPQ 226, 228.

Regarding the definition of "mobile agent" it is an agent, *i.e.*, software, which can move around a network. If just data moves, it is not a mobile agent.

This Honorable Board has cited Figures 2, 3 and 6-9 of Sudo as disclosing distributed plural threads.

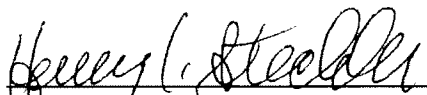
However, there is no disclosure therein of a conversation control part capable of controlling the plurality of conversation threads as presently recited. Since this limitation must be given patentable weight, *supra*, claims 7 and 18 are not anticipated by Sudo.

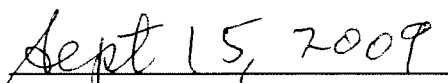
The cited portions of Bhanot describe the interaction of various parts of a system. For example, servicing the client application request (column 4, lines 3 and 4) or acting as a pipeline for conveying information between the client and the server (column 6, lines 31 and 32, emphasis added). There is no disclosure of software being conveyed as happens with a mobile agent. Thus there are no mobile agents in Bhanot. Further, there is no disclosure of the claimed conversation control part capable of controlling the plurality of conversation threads. Thus claims 7 and 18 are not anticipated by Bhanot.

In view of the above, appellants request a rehearing and allowance of claims 7 and 18 by this Honorable Board.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 50-0510.

Respectfully submitted,

  
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